

**California Department of Human Resources
Memorandum**

TO: Personnel Management Liaisons (PML)

SUBJECT: Pregnancy Disability Leave	REFERENCE NUMBER: 2014-019
DATE ISSUED: 08/18/14	SUPERSEDES: 2006-042 Attachment B

This memorandum should be forwarded to:

**Personnel Officers
Personnel Transactions Supervisors
Employee Relations Officers**

FROM: Department of Human Resources
Labor Relations Division

CONTACT: Personnel Services Branch
(916) 323-3343
Fax: (916) 322-0765
Email: psb@calhr.ca.gov

The purpose of this Policy Memo is to summarize the Pregnancy Disability Leave (PDL) regulations promulgated by the Department of Fair Employment and Housing (DFEH) in effect at the time of this Policy Memo, and to clarify state policy regarding the continuation of health benefits during and after PDL.

Leave Entitlement and Employer's Duty to Accommodate

As outlined in the DFEH regulations, a female employee disabled by pregnancy is entitled to up to four months of unpaid PDL. The PDL regulations clarify that disabled by pregnancy includes the following conditions/situations: severe morning sickness, gestational diabetes, pregnancy induced hypertension, preeclampsia, post-partum depression, prenatal or postnatal care, bed rest, childbirth, loss or end of pregnancy, recovery from childbirth or loss/end of pregnancy, and lactation (medical condition related to pregnancy).

While PDL is an unpaid leave, the female employee may elect to use leave credits including accrued sick leave during any unpaid portion of PDL. Four months is defined as 17.33 weeks. If the employer provides more than four months (17.33 weeks) of unpaid leave for other types of disabilities, the same leave must be made available to the female employees who are disabled due to pregnancy, childbirth, or a related medical condition. Accordingly, the result is that there is a statutory floor of four months of PDL.

Unlike the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), there is no 1,250 minimum hours worked requirement under PDL. Rather, to qualify for PDL the female employee need only provide medical verification certifying she is disabled by pregnancy, as described above. If the female employee is disabled by pregnancy, she is entitled to a reasonable accommodation, or a transfer to a less strenuous position, as prescribed by the

health care provider. Leave can be taken during any time the employee is physically unable to work because of pregnancy or a pregnancy related condition. Leave can be taken before or after birth, intermittently, or continuously. As PDL can be used intermittently, female employees on PDL can break the continuity of dock. When calculating the female employee's intermittent leave entitlement, multiply 17.33 by the employee's regular weekly work schedule. For example, a female employee who is regularly scheduled to work 40 hours per week would be entitled to 693 hours of PDL. Again, as stated above, if the employer provides greater than four months (17.33) weeks of unpaid leave for other types of disabilities, the same leave must be afforded to the female employed disabled by pregnancy. For example, if the employer provided unpaid leave for six months for other types of disabilities, then the employer would multiply six months times the female employee's regular weekly work schedule to determine the employee's intermittent leave entitlement. If the female employee works an irregular schedule, the employer should look to the previous four months to determine the average number of hours worked per week.

PDL runs concurrently with any leave entitlement to which the employee may be eligible under the FMLA. For example, if the employee takes 4 months of PDL, her entitlement to 12 weeks of FMLA leave would run concurrently. Employees are entitled to take PDL *in addition* to any leave entitlement they may have under the CFRA. For example, if an employee's doctor takes her off work for 14 weeks based on a disability related to the pregnancy, she would take the 14 weeks PDL which would run concurrently with her FMLA leave, and up to 12 weeks CFRA leave to bond with her baby. The 12 weeks of CFRA leave for baby bonding runs consecutively to the PDL leave, i.e. when the PDL leave ends. Here is an illustration:

PDL (14 weeks)
|.....|

FMLA (12 weeks – runs concurrent with PDL)
|.....|

CFRA (12 weeks – baby bonding begins when the 14 weeks of PDL ends)
|.....|

The state follows the calendar method for calculating the 12 week entitlement period in which employees may take FMLA/CFRA leave, meaning from January 1 through December 31 of each year, an employee is entitled to a maximum of 12 weeks of FMLA/CFRA leave. Pursuant to state law, in the event the CFRA leave entitlement for baby bonding, crosses two calendar years, the employee would be entitled to the maximum benefit in each calendar year. For example, if the employee started her baby bonding on December 15, 2013, she would take two weeks of her 12 week entitlement in calendar year 2013. Then on January 1, 2014, the clock would reset and she would be entitled to a new 12 week baby bonding leave entitlement under CFRA, meaning she would be afforded a total of 14 weeks of bonding leave for the birth of the baby. Bonding leave must be completed within one year of the event.

Benefit Coverage During PDL

Pursuant to Title 2 California Code of Regulations section 11044, the state employer shall maintain up to four months of health, dental, and vision benefits for female employees on PDL.
Coordination of Health Insurance Coverage with Other Employee Benefits

FMLA/CFRA

In addition, if the female employee is eligible for CFRA, then the employee may take leave under CFRA, and the state employer is required to continue benefits for the employee while she is on CFRA. Bonding leave is not limited to female employees. Eligible male employees may take up to 12 weeks of bonding leave under CFRA. The regulations clearly provide that benefits continuation under FMLA or CFRA cannot be used to satisfy any of the four months of PDL benefits continuation. The entitlements to employer-paid group health coverage during pregnancy disability leave and during CFRA leave are two separate and distinct entitlements. Accordingly, benefits can continue under PDL/FMLA (concurrent), and CFRA (consecutive), up to a total of 29.33 weeks.

State Disability Insurance (SDI)/Nonindustrial Disability Insurance (NDI)

Pursuant to the Employment Development Department (EDD), which administers the SDI¹ and NDI² programs, the usual disability period for a normal pregnancy is up to four weeks before the expected delivery date and up to six weeks after the actual delivery. However, a physician/practitioner may certify a longer period if the delivery is by Cesarean section, if there are medical complications, or if the female employee is unable to perform her regular or customary job duties based on a disability due to pregnancy. Under the SDI program, the employer will pay the employer's portion of the health benefits premium for up to 26 weeks. Under the NDI program, the employer will pay the employer's portion of the health benefits premium for up to 26 weeks.

FlexElect

Reimbursement account and/or cash option (Flex or CoBen) enrollment will stop while the employee is on an unpaid leave of absence. If the employee returns to pay status in the same plan year, the enrollment will resume. Reimbursement account deductions will continue for employees who have sufficient pay issue to cover the deduction during any given pay period. Pay may issue for time worked, leave credits used to cover the FMLA, CFRA, or PDL absence, NDI or ENDI payments, or supplementing SDI with the use of leave credits.

¹ The SDI program was negotiated for employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21.

² Non-Industrial Disability Insurance (NDI) covers excluded employees and rank-and-file employees in bargaining units 2, 5, 6, 7, 8, 9, 10, 12, 13, 16, 18, and 19.

If an employee is enrolled in the medical reimbursement account and wishes to continue to submit claims for services provided during the leave of absence, the employee may elect to continue making contributions through COBRA.

Employment History/Payroll Processing

Departments are required to track FMLA, CFRA and PDL hours used by the employee. Accurate record keeping is necessary and subject to audit by CalHR. For departments utilizing the State Controller's Office (SCO's) Leave Accounting System, a Leave Accounting Letter will be issued when PDL and CFRA codes have been established. Until the Leave Accounting Letter is issued, manual tracking is required for all departments regardless of whether or not they are using the SCO's Leave Accounting System.

Departmental Human Resources staff is responsible for documenting a PDL leave of absence and requesting pay and benefit coverage via the SCO. SCO will distribute a Payroll Letter that includes documentation instructions.

For questions related to this PML, your headquarters' personnel office liaisons should contact Department of Human Resources, Personnel Services Branch at the telephone number or email address provided above.

/s/ Pam Manwiller

Pam Manwiller
Deputy Director Labor Relations

ATTACHMENTS³

Employee's Rights and Obligations As A Pregnant Employee
Family Care and Medical Leave and Pregnancy Disability Leave
Certification of Health Care Provider for PDL, Transfer, and/or Reasonable Accommodation

³ The attached documents are from DFEH. The most current documents are available directly on DFEH's website at the following link http://www.dfeh.ca.gov/Publications_Publications.htm.

**"NOTICE A"****YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE**

If you are pregnant, have a related medical condition, or are recovering from childbirth, **PLEASE READ THIS NOTICE.**

- California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy"). California also law prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.

- Your employer has an obligation to:
 - reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);
 - transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
 - provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17 $\frac{1}{3}$ weeks) and return you to your same job when you are no longer disabled by your pregnancy or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from nonleave related employment actions, such as a layoff.
 - provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in Labor Code section 1030, et seq.

- For pregnancy disability leave:
 - PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.
 - Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position if you request a written guarantee. Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.
 - PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, "severe morning sickness," gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.

Notice A

YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE

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- PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.
- Your leave will be paid or unpaid depending on your employer's policy for other medical leaves. You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.
- At your discretion, you can use any vacation or other paid time off during your PDL.
- Your employer may require or you may choose to use any available sick leave during your PDL.
- Your employer is required to continue your group health coverage during your PDL at the level and under the conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.
- Taking PDL may impact certain of your benefits and your seniority date; please contact your employer for details.

Notice obligations as an Employee:

- Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans – 30 days advance notice if the need for the reasonable accommodation, transfer or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.
- Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, your employer may require you to supply a written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer or PDL. If the need is an emergency or unforeseeable, you must provide this certification within the time frame your employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification. See your employer for a copy of a medical certification form to give to your health care provider to complete.
- PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact your employer, visit the Department of Fair Employment and Housing's Web site at www.dfeh.ca.gov, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

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**“NOTICE B”****FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE**

- Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.
- Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take pregnancy disability leave (PDL) of up to four months, or the working days in one-third of a year or 17 $\frac{1}{3}$ weeks, depending on your period(s) of actual disability. Time off needed for prenatal or postnatal care; doctor-ordered bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; childbirth; postpartum depression; loss or end of pregnancy; or recovery from childbirth or loss or end of pregnancy would all be covered by your PDL.
- Your employer also has an obligation to reasonably accommodate your medical needs (such as allowing more frequent breaks) and to transfer you to a less strenuous or hazardous position if it is medically advisable because of your pregnancy.
- If you are CFRA-eligible, you have certain rights to take BOTH PDL and a separate CFRA leave for reason of the birth of your child. Both leaves guarantee reinstatement to the same or a comparable position at the end of the leave, subject to any defense allowed under the law. If possible, you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or a family member). For events that are unforeseeable, you must to notify your employer, at least verbally, as soon as you learn of the need for the leave.
- Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.
- Your employer may require medical certification from your health care provider before allowing you a leave for:
 - your pregnancy;
 - your own serious health condition; or
 - to care for your child, parent, or spouse who has a serious health condition.

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- See your employer for a copy of a medical certification form to give to your health care provider to complete.
- When medically necessary, leave may be taken on an intermittent or a reduced work schedule. If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.
- Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. Contact your employer for more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). The FEHA prohibits employers from denying, interfering with, or restraining your exercise of these rights. For more information about your rights and obligations, contact your employer, visit the Department of Fair Employment and Housing's Web site at www.dfeh.ca.gov, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

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CERTIFICATION OF HEALTH CARE PROVIDER
FOR PREGNANCY DISABILITY LEAVE, TRANSFER AND/OR REASONABLE
ACCOMMODATION

Employee's Name:

Please certify that, because of this patient's pregnancy, childbirth, or a related medical condition (including, but not limited to, recovery from pregnancy, childbirth, loss or end of pregnancy, or post-partum depression), this patient needs (check all appropriate category boxes):

- Time off for medical appointments.
Specify when and for what duration:

- A disability leave. [Because of a patient's pregnancy, childbirth or a related medical condition, she cannot perform one or more of the essential functions of her job or cannot perform any of these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons.]
Beginning (Estimate): _____
Ending (Estimate): _____
- Intermittent leave. Specify medically advisable intermittent leave schedule:

_____ Beginning (Estimate): _____
Ending (Estimate): _____
- Reduced work schedule. [Specify medically advisable reduced work schedule.]

_____ Beginning (Estimate): _____
Ending (Estimate): _____
- Transfer to a less strenuous or hazardous position or to be assigned to less strenuous or hazardous duties [specify what would be a medically advisable position/duties].

_____ Beginning (Estimate): _____
Ending (Estimate): _____
- Reasonable accommodation(s). [Specify medically advisable needed accommodation(s). These could include, but are not limited to, modifying lifting requirements, or providing more frequent breaks, or providing a stool or chair.]

Beginning (Estimate): _____
Ending (Estimate): _____

Name, license number and medical/health care specialty [printed] of health care provider.

Signature of health care provider:

Authority Cited: Government Code sections 12935, subd. (a), and 12945.

Reference: Government Code sections 12940, 12945; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 C.F.R. § 825.

